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ABSTRACT

Student affairs administrators make discretionary moral and ethical choices regarding the relationship of individual students and of institutional policy to the law. A study was conducted which used Kohlberg's Moral Judgment Development Theory to explore the relationship between the student personnel administrator's moral judgment and his or her ability to concur with court decisions concerning student rights. Voting members (N=188) of the National Association of Student Personnel Administrators completed a short form of the Defining Issues Test and rated six brief vignettes of court cases from the federal law which related to student affairs issues. For each vignette, respondents rated how they believed the court ruled in each case, how strongly they agreed or disagreed with the perceived court decision, and whether or not they themselves had any litigation experience with that particular area of law. The results revealed that subjects had a high overall comfort level with their legal knowledge and their training, and they tended to recommend the same training for others. They reported little actual experience with litigation in common areas of student affairs, along with a very low level of concurrence with actual court decisions. (NB)

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Legal Decisions and Moral Judgement of Student Affairs Administrators

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Abstract

Student affairs administrators make discretionary moral and ethical choices regarding the relationship of individual students and of institutional policy to the law. This paper uses Kolberg's Moral Judgement Development Theory to explore the relationship between the student personnel administrator's moral judgement and his or her ability to concur with court decisions concerning student rights.

Student affairs administrators are charged with making discretionary decisions daily regarding institutional policy and student rights, both in an ethical and moral vein as well as within legal parameters (Parr and Buchanan, 1979, p.13). Creating the best educational policies which are legally sound, morally just, and developmentally consistent is not easy. This is especially true as a result of the rapidly changing and expanding role of law in higher education administration.

Law has become an indispensable component of decision making, to the point that educational policy questions have sometimes become legal questions. The past twenty five years have been tumultuous in terms of increasing federal statutes and regulations, issues of liability, student health, welfare, and safety, and a variety of judicial issues of misconduct (Kaplan, 1985). An administrator's ability to effectively cope with this legal encroachment is further confused by the incongruency between the language of the law and accepted practices of the law. For example, "in loco parentis" has been long gone as an established policy of defining the relationship between the student and the institution, yet the freedoms granted from the demise of "in loco parentis" can lead to problems and lawsuits. At these times it is not unheard of that lawyers on behalf of the student reminds the university of "parental responsibilities", a standard of supervision from over twenty years ago (Reidharr, 1985).

(Appreciation to Jane Sullivan and Robert Shoop for their contributions)

The complex interactions of college life and legal abstractions has led to an increase in full time legal counsel for universities. Much higher education literature has stressed the importance of learning guidelines for effectively using legal counsel (Beale, 1974). This role of legal counsel has often been to identify, define, and provide options for resolving legal problems. This "treatment" approach to dealing with "the problem at hand" as been predominant.

However, despite the fact that competent legal counsel will sometimes be required, particularly to clarify law and help identify potential legal issues, the responsibility for many decisions which may or may not have legal implications remains with the practitioner. It should not be assumed that the judgement of an attorney can or should substitute for the judgement of a trained student affairs administrator. Although total dependence on the "best judgement" of the educator no longer exists as it once did, i.e. unquestioned by the courts, best judgements are still used as a way to deal with the many rules and guidelines governing the relationship between students and administrators (Alexander and Solomon, 1972).

All of this serves to make student affairs administrators acutely aware of the legal implications of their professional practice, as well as the potential for their decisions to be second guessed or reviewed by the courts. The question then remains that if administrators are not to be formally trained in law, how should we as a profession proceed to best prepare administrators to face these legal challenges?

This was the primary impetus to exploring chief student

affairs administrators' reactions to and experience with litigation in higher education. Research questions presented in this study include the following:

To what degree do administrators agree or disagree with court decisions concerning student affairs issues?

To what degree are administrators aware of how the courts have decided in various student affairs cases?

How much experience do student affairs administrators have with dealing with the courts?

How comfortable are student affairs administrators with their level of legal knowledge?

Does the amount of experience with litigation effect knowledge and attitude about court decisions?

How do student affairs administrators view the increased role of the courts in student affairs practice?

In what ways are student affairs administrators trained in legal issues and what do they recommend for the training of others?

In order to place legal implications of various decision making into a student affairs context, Kohlberg's theory of moral judgement development was used as a way of understanding one's development of independent thinking and moral autonomy in regard to legal decisions. Kohlberg (1971) studied the way people conceive of the distribution of basic rights and obligations in a society and found that the essential structure of morality is the principle of justice, regulated by concepts of equality and reciprocity. Table 1 displays the stages of moral judgment and

how they are related to a legal understanding (See Table 1).

Insert Table 1 About Here

According to his cognitive-moral development theory, as individuals develop, they continually make moral and ethical choices regarding the law, with the notion of consequences ranging in sophistication from fear of punishment to principles of fairness and justice. Change in moral development is grounded in exposure to cognitive conflict in one's reasoning about moral situations, such as engaging in discussions concerning contemporary legal issues.

There are significant similarities between concepts of law, justice and principled moral reasoning. Justice as the basis of law has been a subject of wide sociological, philosophical, political, and legal literature. In a book by Morris (1959), Aristotle defines justice as the "practice of virtue toward someone else" (p. 17); Eugene Ehrlich, founder of sociological jurisprudence, says that law is based on justice and is a means whereby society can order the relations between its' interests (pp. 437-465) and Dabin defines justice as "indisolubly tied to the notion of law as it is primarily a moral virtue" (p. 490). Finally, Dworkin (1985) contends that moral principles are the foundation of law, and that law is based on principles of fairness, of how governments ought to treat its' citizens, of justice.

Judges, by and large, decide cases on the grounds of principle. Each person who has to decide law has to rely on his or her own judgement. Similarly, administrators rely on their own best judgement when attempting to make decisions that are

congruent with the moral imperatives of justice, as reflected by the courts. Just as judges are expected to be guided by justice in their decision making, administrators are expected to make just decisions concerning policies and practices toward students.

If both the courts and administrators use the same criteria of justice as measured by Kohlberg, then one would believe that as moral development increases, an ability to concur with court decisions concerning student rights would also increase.

Like Kohlberg, Rest (1974, p.216) equated the comprehension of social-moral concepts to law and justice. Both Rest and Kohlberg believe that legal issues can function as a challenge to one's thinking process, and therefore result in a more elaborate cognitive structure, the way one organizes thoughts into categories and integrates this information into opinions and decisions. In order to measure and evaluate one's cognitive structure, Rest (1979) developed the Defining Issues Test (DIT), a standardized objective measure of moral development consisting of twelve issues relating to the six Kohlberg stages of moral/cognitive development. The twelve issues are ranked and rated for importance in decision making concerning moral issues. A major advantage of this instrument is that it minimizes error variance due to difference in expression resulting from Kohlberg's open-ended instrument. The DIT has standardized test-retest reliability, substantial correlation with Kohlberg's moral judgement scale ($r=.68$), and is valid (Rest, 1974).

Both Rest and Kohlberg's cross sectional and longitudinal studies suggest that adult moral development plateaus in early adulthood, and at the end of formal education. Longitudinal studies also show that the correlation between moral development and education is stronger that its' correlation with chronological age. Students moving through high school to college have the most dramatic change in their moral development, and those adults who continue their education, especially when moral judgement is emphasized (i.e. the study of philosophy, law, human behavior), attain much higher DIT scores.

This paper uses Kohlberg's moral development theory as measured by Rest's Defining Issues Test to explore this relationship between an administrator's moral development score and his or her ability to concur with court decisions concerning student rights,as well as attitude toward the courts, experience with legal issues, comfort with this knowledge and experience, and the training of chief student affairs officers (CSAO).

Methodology

The population for this study was the voting members of the National Association of Student Personnel Administrators (NASPA) who primarily consists of chief student affairs officers (deans, directors, vice presidents of student affairs divisions). Of the 700 members contacted by mail, 241 (35%) surveys were returned and 53 (22%) were eliminated, leaving a total of 188 (27%) which passed all consistency tests, and were correctly completed. These individuals had an average of seventeen years of professional experience, most were from institutions of one to

three thousand students, and most worked at four year private institutions.

Each respondent was sent a short form of the Defining Issues Test (Rest, 1974), as well as six brief vignettes of court cases from federal law which relate to student affairs issues in the areas of first amendment (separation of church and state, free speech, free press, right to assemble and petition the government); fourth amendment (search and seizure); fourteenth amendment (due process and equal protection of the law); contract law; tort liability (civil wrong, negligence, defamation); and Title IX (sex discrimination). Each respondent was to rate how they believed the court ruled in each case (concurrance with the courts), how strongly they agreed or disagreed with the perceived court decision (level 4 and 5 represent agree or strongly agree), and whether or not they themselves had any litigation experience with that particular area of law (see Table 2).

Insert Table 2 About Here

Each respondent was then given a total score across the six vignettes for number correct concurrances, total agreement, and total experience. These scores were then correlated with their DIT score, gender, comfort with knowledge level, and institution type.

Results

The average DIT score for graduates of professional school is P = 47 (P describes the percentage of time the highest level of principled moral reasoning is used when making a decision). In this study of student affairs administrators, the

average P score was P = 46. A correlation matrix was developed to explore any possible relationships between items. None showed significance, but several proved to be of interest. The average number of correct responses to the legal vignettes was 3.5 out of a possible six. Recent graduates had a higher number correct (r=.171) as did those from larger institutions (r=.167). There were positive correlations between agreement with perceived court decisions and measures of importance of training in legal issues (r=.173), comfort with legal knowledge (r=.193), and years in service (r=.181). Finally, importance of training in legal issues (r=.155) and comfort level with legal knowledge (r=.178) increased as experience with litigation increased (r=.155).

Women were slightly less comfortable with their level of legal knowledge then were men, and when seeking counsel, both men and women first seek the institutional attorney, men rely of their own best judgement second whereas women more highly rely on a combination of source of information (see Table 3).

Insert Table 3 About Here

Level of comfort with own knowledge in legal issues was correlated with total experience (see Table 4) and with institution type (see Table 5).

Insert Table 4 About Here

Insert Table 5 About Here

Not surprisingly, those with the least amount of experience were less comfortable. However, what is interesting is that 79% of this total population stated that they had no experience in any of the six areas. Still there was a general comfort level of x =

3.5 (range of 1 - 5). Most respondents were from four year schools, with those from public schools having greater comfort with their level of knowledge, however those from four year public schools had less experience than those from four year private schools. Level of comfort with legal knowledge increased as importance of training, years in service, institution size, experience with litigation, and degree level increased. Finally, recommendations for training based on own training showed that the most suggested methods for training in legal issues is through course work (32%), workshops (32%), and a combination of other methods (25%) (see Table 6).

Insert Table 6 About Here

Additional comments by respondents indicated that one must continually read texts and journals in the area and not rely on formal training to get the information that is needed. Many believe that legal training can satisfactorially be accomplished by including legal issues discussions in other coursework and by having periodic sessions for professional development with legal authorities.

Conclusions

Student affairs administrators in this study were shown to have a high overall comfort level with their legal knowledge and their training, and they tend to recommend the same training for others. Yet these respondents report very little actual experience with litigation in these common areas of student affairs, along with a very low level of concurrance with actual court decisions. Still, they feel that training in this area is

very important. So this comfort with where they are is rarely tested or challenged. Previously cited authors suggest that litigation is dramatically increasing in the field of student affairs and that legal knowledge must be improved. Yet this study suggests that although respondents agree that this area is important, their comfort with their level of knowledge and limited experience does not create much incentive to increase their involvement with training in this area. This seems to be primarily because of their reliance on legal experts when potential areas of litigation arise.

Many of the respondents indicated that although they have npt been directly involved in actual litigation, they are always conscious of the possibility of legal infractions, and attempt to carefully avoid any .pa violations of students' rights. The relationship between moral judgment and legal concurrance remains intriguing despite the lack of such a finding in this study. Because accurate measures of legal knowledge and true concurrance with court cases are difficult to obtain, future studies of this relationship should be careful to design such measures that are both valid and reliable.

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TABLE 1

STAGES OF MORAL JUDGMENT

Stage	Coordination of expectations about actions (how roles are known and shared	Schemes of balancing interests (how equilibrium is achieved	Central concept for determining moral rights and responsibilities
Stage 1	The caretaker makes known certain demands on the child's behavior.	The child does not share in making rules, but understands that obedience will bring freedom from punishment.	The morality of obedience: "Do what you're told."
Stage 2	Although each person is understood to have his own interests, an exchange of favors might be mutually decided.	If each party sees something to gain in an exchange, then both want to reciprocate.	The morality of instrumental egoism and simple exchange: "Let's make a deal."
Stage 3	Through reciprocal role taking, individuals attain a mutual understanding about each other and the on-going pattern of their interactions.	Friendship relationships establish a stabilized and enduring scheme of cooperation. Each party anticipates the feelings, needs, and wants of the other and acts in the other's welfare.	The morality of interpersonal concordance: "Be considerate, nice and kind, and you'll get along with people."
Stage 4	All members of society know what is expected of them through public institutionalized law.	Unless a society-wide system of cooperation is established and stabilized, no individual can really make plans. Each person should follow the law and do his/her particular job anticipating that other people will also fullfill their responsibilities.	The morality of law and duety to the social order: "Everyone in society is obligated and protected by the law."

STAGES OF MORAL JUDGMENT (Cont'd.)

Stage	Coordination of expectations about actions (how roles are known and shared	Schemes of balancing interests (how equilibrium is achieved	Central concept for determining moral rights and responsibilities
Stage 5	Formal procedures are institutionalized for making laws, which one anticipates rational people would accept.	Law-making procedures are devised so that they reflect the general will of the people, at the same time insuring certain basic rights to all. With each person having a say in the decision process, each will see that his/her interests are maximized while at the same time having a basis for making claims on other people.	The morality of societal consensus: "You are obligated by whatever arrangements are agreed to by due process procedures."
Stage 6	The logical requirements of non-arbitrary cooperation among rational, equal, and impartial people are taken as ideal criteria for social organization which one anticipates rational people would accept.	A scheme of cooperation that negates or neutralizes all arbitrary distribution of rights and responsibilities is the most equilibrated, for such system is maximizing the simultaneous benefit to each member so that any deviation from these rules would advantage some members at the expense of others.	The morality of non-arbitrary social cooperation: "How rational and impartial people would organize cooperation is moral."

(Rest, 1979, p 21-22)

TABLE 2

TOTAL PERCENTAGE OF CONCURRANCE WITH COURT DECISION, PERCENTAGE OF HIGH LEVEL OF AGREEMENT WITH COURT DECISION, AND PERCENTAGE OF EXPERIENCE WITH AREA OF LITIGATION

Amendments	% Concurrance	% Agree	% Exp
1. 1st - Students request facilities for religious services and denied. - Court ruled in favor of institution.	37	65	4
2. 4th - Search of students room without permission revealed marijuana and student was suspended. - Court ruled in favor of institution.	34	71	9
3. Due Process - students refused to participate in hearing concerning their demonstration because of vague charges. - Court ruled in favor of institution.	92	85	9
4. Contract - Federal narcotic agent of institution told student to speak freely of marijuana use - suspended student. - Court ruled in favor of student.	97	84	2
5. Tort - Student raped in residence hall with unlocked doors. - Court ruled in favor of student.	93	78	6
6. Title IX - Male only honor society received significant assistance from university which was than stopped. - Court ruled in favor of institution.	77	64	4

TABLE 3

GENDER X ACTION

	Own Judgment 1	Consult Supervisor 2	Consult Instit. Attorney 3	Consult Outside Attorney 4	Other 5	Combination 6	Totals
Male	17	8	60	3	5	7	78
Female	3	8	60	8	3	18	22

(row percents)

TABLE 4

COMFORT WITH KNOWLEDGE X TOTAL EXPERIENCE

Total Experience	Comfort Little 2	3	4	Most 5	Total	x = 3.5
0	6%	50%	38%	6%	79%	
1	8%	36%	52%	4%	13%	
2	0%	36%	45%	18%	6%	
3	0%	0%	67%	33%	2%	

(row percents)

TABLE 5

COMFORT WITH KNOWLEDGE X INSTITUTION TYPE

Institution Type	Comfort Little 2	3	4	Most 5	Total
4 yr. public	2%	31%	54%	13%	29%
4 yr. private	7%	50%	39%	4%	51%
2 yr. public	4%	66%	26%	4%	14%
2 yr. private	0%	67%	33%	0%	3%
Other	--	--	--	--	3%

(row percents)

TABLE 6

RECOMMENDATIONS AS A FUNCTION OF TRAINING AND LEVEL OF IMPORTANCE OF TRAINING

32% of whole recommend a course: of these,

-65% rated training as MOST important

-52% were trained by a COMBINATION

-15% were trained by COURSE

32% of whole recommend a workshop: of these,

-48% rated training as MOST important

-35% were trained by WORKSHOPS

-23% were trained by SELF

-22% were trained by COMBINATION

25% of whole recommend a combination: of these,

-64% rated training as MOST important

-77% were trained by COMBINATION